

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.170 OF 2005

M/s.Kantilal Chhotalal & Anr....Petitioners.

V/s.

Union of India & Ors. ...Respondents.

Mr.Mohan Jaykar i/b M/s. Khaitan & Jaykar for
the Petitioners.

Mr.Rajiv Chavan with Mr.A.S.Rao for the
Respondents.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.

DATE : 27th June, 2005.

P.C.:

1. **Rule.** Rule made returnable on 4th
July, 2005.

2. Heard the learned counsel for the
Petitioners and the learned counsel for the
Respondents. The learned counsel for the
Respondent Nos.1 and 2 waive service. By
consent taken up for final hearing at this
stage.

2. By this Petition, the Petitioner has
challenged the order dated 18th May,2004
passed by the Service Tax Appellate Tribunal
Bench, Bombay. The learned counsel Shri

Jaykar who is appearing on behalf of the Petitioners, strongly contended that on 16th October, 2003, Shri Jaykar was appearing before a Division Bench of this Court and as such, he states that he could not appear before the Service Tax Appellate Tribunal and only junior, Shri Ashish was present and he could not argue the matter before Service Tax Appellate Tribunal. Shri Jaykar pointed out that thereafter, the Petitioner took out an application for restoration of Appeal. On that ground Paragraph- 2 of the said Restoration Application clearly indicates that the learned advocate Shri Jaykar could not appear before Service Tax Appellate Tribunal on 16th October, 2003. The learned counsel points out that inspite of the same, the Service Tax Appellate Tribunal, by an order dated 18th May, 2004 had declined to restore the said appeal. We have perused the restoration application and dispute is that Shri Ashish, who is a junior to Shri Jaykar who could not obviously argue before the Service Tax Appellate Tribunal. The Appellant ought to have had a fair opportunity to argue the Appeal.

3. Under the aforesaid facts and circumstances and in the larger interest of justice, we set aside the order dated 18th May, 2004 and also the order dated 16th October, 2003 and restore the appeal No.C/281/97-Mumbai before Service Tax Appellate Tribunal, to be heard on its own merits in accordance with law. The Service Tax Appellate Tribunal shall issue an appropriate notice to the Petitioners and the Respondents , and after fixing the schedule, the Service Tax Appellate Tribunal shall hear the said Appeal expeditiously. Rule is made absolute in the above terms with no order as to costs.

(S.RADHAKRISHNAN, J.)

(J.H.BHATIA, J.)